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HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

DIVISION BENCH

CORAM : HON'BLE SHRI S.R. NAYAK, CJ
& HON'BLE SHRI D.R. DESHMUKH, J.

Writ Petition No.4526 of 2006

PETITIONER Bhuneswar Parsad Dubey son of Late Shrinivas Dubey, aged about 52 years, Resident of Near C.S.E.B. Office, Raipur road, Tifra, Bilaspur (c.G.)

VERSUS

RESPONDENT

1. Union of India
   Through : The Secretary,
   Department of posts, 'Dak Bhawan,
   Parliament Street,
   NEW DELHI
2. The Member (P)
   Postal Services Board,
   Govt. of India, Deptt. of Posts
   Ministry of Communication, Sanchar Bhawan, NEW DELHI
3. Director, Postal Services, office of Chief P.M.G. Raipur, C.G.
4. The Superintendent of Post Officers, Bilaspur Division, BILASPUR (C.G.)

Present: Shri R.K. Jaiswal, learned counsel for the petitioner.
Shri Bhishma Kinger, learned Standing Counsel for the respondents.

ORAL ORDER
(Passed on 25th August, 2006)

The following oral order of the Court was passed by

S.R. NAYAK, CJ .

The petitioner – delinquent feeling aggrieved by the order of the Central Administrative Tribunal, Jabalpur, Bench at Bilaspur (for short "the Tribunal") dated 09th September 2004, passed in O.A. No. 118 of 2002, has preferred this writ petition under Articles 226 / 227 of the Constitution of India.

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(2) The Disciplinary Authority in contemplation of departmental proceedings against the petitioner placed him under suspension on 09-04-1986. Thereafterwards, the Disciplinary Authority having conducted a regular departmental enquiry found him guilty of misconduct alleged against him, and by its order dated 06-04-1990 dismissed the petitioner from services as a disciplinary measure. Feeling aggrieved by the order of the Disciplinary Authority, the petitioner preferred appeal. The Appellate Authority while confirming the finding on misconduct thought it appropriate to reduce the penalty imposed by the Disciplinary Authority. Accordingly, the Appellate Authority modified the penalty of dismissal to that of deduction of pay to the minimum of the scale of pay of Rs.975-25-1150-FR-30-1660 for a period of 2 years from the date of reinstatement into service. It further directed that during the period of reduction, the petitioner – delinquent is not entitled to increments and that reduction in pay would have the effect of postponing his future increments. At that stage, the petitioner – delinquent instituted O.A. No. 783 of 1993 before the Tribunal contending that since the punishment of dismissal awarded by the Disciplinary Authority was modified by the Appellate Authority to that of reduction in pay for a period of 2 years, the period from the date of his suspension to the date of reinstatement should be regularized by passing appropriate order and the department had failed to do so. In the context of the above submission of the petitioner – delinquent, the Tribunal by its order dated 06-08-1998 disposed of O.A. No. 783 of 1993 in the following terms :

> "2 The submission of the applicant is that the initial punishment of dismissal from service was modified by the appellate authority to that of reduction in pay for a period of two years. The applicant was therefore reinstated in service in the year 1995. The only grievance of the applicant

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is that the period from the date of his suspension to the date of reinstatement is to be regularized by passing of a proper order. We accordingly allow this application with a direction to the respondents to pass an order in this regard within two months from today."

(3) In pursuance of the above direction of the Tribunal, the respondents considered the claim of the petitioner – delinquent and passed order on 22-12-1999 whereby and whereunder it was directed that the period from 09-04-1986 to 16-02-1995 should be regarded as on duty only for the purpose of pension and not for any other purpose; that pay and allowances for the period from 09-04-1986 to 05-04-1990 are restricted to the subsistence allowance and other allowances already paid and that the pay and allowances for the period from 06-04-1990 to 16-02-1995 are restricted to the subsistence allowance and other allowances that the petitioner – delinquent had drawn before his dismissal. It appears that the aforesaid direction was also confirmed by the Appellate Authority vide order dated 05-02-2001. Feeling aggrieved by the above directions, the petitioner – delinquent again instituted O.A. No. 118 of 2002 before the Tribunal. The Tribunal by its order dated 09-09-2004 which is impugned in this writ petition has dismissed the said O.A. Hence, the petitioner – delinquent has filed this writ petition.

(4) We have heard learned counsel for the parties. It was contended that since the Appellate Authority has reduced the penalty imposed by the Disciplinary Authority, the petitioner – delinquent is entitled to claim pay and allowances for the period from 09-04-1986 to 16-02-1995. We do not think that there is any merit in the contention. It is not a case where the Appellate Authority exonerated the petitioner – delinquent from the charge of misconduct levelled against the petitioner. On the other hand,

the order of the Disciplinary Authority stands confirmed by the Appellate Authority. However, the Appellate Authority having regard to the facts and circumstances of the case and in its discretion thought it appropriate to reduce the quantum of penalty. That circumstance itself would not vest any enforceable right in the petitioner to contend that he should be paid pay and allowances for the period from 09-04-1986 the date on which he was placed under suspension in contemplation of the departmental enquiry to 16-02-1995 the date on which he was reinstated into service in pursuance of the order made by the Appellate Authority. The discretion exercised by the respondents and the aforementioned directions issued by the respondents could not be faulted with, because, undeniably the Disciplinary Authority has the power to decide how the suspension period should be treated in the case of a delinquent who is found to be guilty of misconduct leveled against him. Above all, we are of the considered opinion that having regard to the nature of misconduct alleged and proved against the petitioner – delinquent, the impugned directions should be regarded as just and reasonable. There is no warrant for this Court to interfere with the impugned order. The writ petition is, therefore, dismissed. No costs.

Sd/-
Chief Justice

Sd/-
Dilip Raosaheb Deshmukh
Judge